In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 1220

JOSEPH J. DELFINO, M.D., PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner brought this suit to contest the constitutionality of 38 U.S.C. 3401–3405. These provisions govern the recognition of agents and attorneys for the preparation, presentation and prosecution of claims for benefits under laws administered by the Veterans' Administration, and limit the fees payable to such agents and attorneys to $10 with respect to any one claim. Petitioner argues that the provisions—which were designed to protect veterans from unreasonable exactions—abridge his freedom of speech and association and liberty of contract because they preclude him and other veterans from hiring counsel who charge more than the statutory amount. The district court dismissed petitioner's complaint on

261-880—67

October 3, 1966, for failure to present a case or controversy. The district court's order allowed petitioner two weeks to file an amended complaint, but he did not do so (Pet. 10).

In a separate pleading, petitioner renewed his contentions and further complained that the government's motion to dismiss his complaint had been designed to deprive him of his First Amendment right to petition for redress of grievances. This pleading also was dismissed (Pet. 11), and on November 17, 1966, petitioner filed a notice of appeal.[1] On December 7, 1966, the court of appeals denied petitioner's motion for appointment of counsel (Pet. 13), and by order of January 5, 1967 (Pet. 14), it stayed further proceedings on appeal pending the present certiorari proceedings, wherein petitioner seeks review of the dismissal of his complaint by the district court and of the court of appeals' denial of his motion for appointment of counsel.

It is evident from petitioner's pleadings that he has not alleged any actual controversy between himself and the United States. It does not appear from his papers how the provisions of 38 U.S.C. 3401 *et seq.* injure him, or that they at present do, or in the foreseeable future will, abridge his right to consult with an attorney of his choosing. Accordingly, this action for a declaratory judgment may not be maintained. *Public Service Comm'n of Utah* v. *Wycoff Co.*, 344 U.S. 237; *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270.

[1] Apparently, petitioner did not appeal from the order dismissing his complaint.

In addition, petitioner's constitutional arguments are without merit. The statutory provisions complained of represent a proper exercise of the congressional power to establish the terms on which governmental benefits are conferred and to protect veterans claiming such benefits against overreaching by agents and attorneys. See *Hines* v. *Lowrey,* 305 U.S. 85, 90–91.; *Margolin* v. *United States,* 269 U.S. 93; cf. *Moss* v. *United States,* 311 F. 2d 462 (C.A. 2), petition for certiorari dismissed pursuant to Rule 60, 374 U.S. 819.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MAY 1967.

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